

**REMARKS**

**I. Formalities**

Applicants thank the Examiner for allowing claims 2-5. Applicants also thank the Examiner for indicating acceptance of the formal drawings filed on April 5, 2004.

On page 4 of the current Office Action, the Examiner states that Applicants' amendment of the application necessitated the new grounds of rejection, making this second Office Action final. However, in the amendment filed on September 18, 2006, no amendments that necessitate new grounds for rejection were made. Although Applicants amended claims 2 and 3, these claims have been allowed in the current Office Action. Further, Applicants' only amendments to claim 1 were merely grammatical changes and removal of reference numbers.

MPEP § 706.07(a) states:

Under present practice, second ... actions on the merits shall be final, *except* where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement ... (emphasis added)

Further, the same section of the MPEP states:

A second action ... on the merits ... should not be made final if it includes a rejection, on prior art not of record, of any claim amended to include limitations which should reasonably have been expected to be claimed (emphasis added).

Applicants' non-substantive amendments to claim 1 did not necessitate the Examiner's introduction of the new ground of rejection over U.S. Patent No. 7,088,458 to Wegmann. Also, Applicants did not submit an information disclosure statement listing this reference. Further, it was reasonable to expect that Applicants would make minor editorial changes to claim 1 to

improve the clarity of the claim. As Applicants noted in the Remarks section of the amendment filed on September 18, 2006, these changes were not made for patentability reasons, and did not narrow the scope of the claim. Therefore, Applicants request the Examiner to reconsider the finality of the rejection and withdraw the premature final rejection, as provided for in MPEP § 706.07(d).

## **II. Status of the Application**

By the present Amendment, Applicants amend claim 1, and add new claim 6. No new matter is added.

Claims 1-6 are all the claims pending in the application. Claims 2-5 have been allowed. Claim 1 has been rejected. The present Amendment addresses each point of rejection raised by the Examiner. Favorable reconsideration is respectfully requested.

## **III. Claim Rejection Under 35 U.S.C. § 102(e)**

Claim 1 stands rejected under 35 U.S.C. § 103(a) as allegedly being anticipated by U.S. Patent No. 7,088,458 to Wegmann. Applicants respectfully traverse this ground of rejection.

Wegmann is directed to a combined wavefront and distortion measurement apparatus (col. 2, lines 6-8). Fig. 3 shows a structure plate unit 8 which is used as an object structure unit and an image structure unit (col. 5, lines 37-41). The checkerboard-grid pattern 8b serves as a coherence mask on the object side, and as a diffraction grating on the image side (col. 5, lines 45-50). Wegmann discloses that the dimensionality of the image structure is always matched to the object structure (col. 2, lines 7-16). For example, as shown in Fig. 5, a measurement

AMENDMENT UNDER 37 C.F.R. § 1.116  
EXPEDITED PROCEDURE  
GROUP 2877

apparatus uses a first pinhole mask 2b on the object side, and a second pinhole mask 3a on the image side (col. 6, lines 32-44).

Applicants submit that Wegmann fails to teach or suggest a wavefront measurement apparatus in which the mask structure has a different dimensionality than the grating structure, as recited in claim 1. For example, if the mask structure has a one-dimensional structure pattern, the grating structure has a two-dimensional structure pattern, and vice versa. In contrast, as discussed above, Wegmann discloses that the image structure always has the same dimensionality as the grating structure. Therefore, claim 1 distinguishes over Wegmann at least by virtue of the aforementioned differences, as well as its additionally recited features.

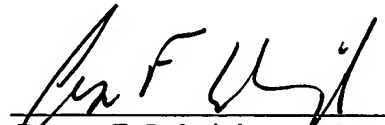
AMENDMENT UNDER 37 C.F.R. § 1.116  
EXPEDITED PROCEDURE  
GROUP 2877

**IV. Conclusion**

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

  
George F. Lehnigk  
Registration No. 36,359

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

**23373**

CUSTOMER NUMBER

Date: February 28, 2007